

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

WILLIAM CHARLES HARPER,)
)
Plaintiff,)
)
VS.) No. 14-2129-JDT-tmp
)
)
MARK H. LUTTRELL, JR., ET AL.,)
)
)
Defendants.)
)

ORDER DIRECTING PLAINTIFF TO FILE UPDATED FINANCIAL INFORMATION OR PAY THE FULL \$505 APPELLATE FILING FEE

Plaintiff William Charles Harper, a prisoner acting *pro se*, filed a civil complaint pursuant to 42 U.S.C. § 1983. (ECF No. 1.) The Court granted leave to proceed *in forma pauperis* and assessed the civil filing fee pursuant to the Prison Litigation Reform Act (“PLRA”), 28 U.S.C. §§ 1915(a)-(b). (ECF No. 4.) On November 3, 2015, the Court dismissed the complaint *sua sponte* pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(ii) and 1915A(b)(1); judgment was entered on November 4, 2015. (ECF Nos. 7 & 8.) The order of dismissal also certified that an appeal would not be taken in good faith. (ECF No. 7 at 7-8.) The order of dismissal and judgment, which were sent to Plaintiff at the Shelby County Correctional Center, were returned as undeliverable, stamped “Return to Sender Inmate Discharged.” (ECF No. 9 at 2; ECF No. 10 at 2.)

On May 27, 2016, Plaintiff filed a document the Court construed as a motion to appoint counsel. (ECF No. 12.) The Court denied the motion on May 31, 2016, noting Plaintiff's request was moot because the case had been dismissed several months earlier. (ECF No. 13.) Plaintiff has now filed a notice of appeal (ECF No. 14) and a motion for leave to appeal *in forma pauperis* (ECF No. 15), apparently seeking to appeal the denial of his motion to appoint counsel.¹

Generally, a plaintiff granted leave to proceed *in forma pauperis* is not required to pay filing fees. 28 U.S.C. § 1915(a)(1). Because Plaintiff is a prisoner, however, he must pay the entire \$505 appellate filing fee, although he may be able to take advantage of the installment payment method of § 1915(b). *See McGore v. Wrigglesworth*, 114 F.3d 601, 604 (6th Cir. 1997), partially overruled on other grounds by *LaFountain v. Harry*, 716 F.3d 944, 951 (6th Cir. 2013). In order to take advantage of the installment procedures, a prisoner plaintiff must submit, along with the notice of appeal, an updated *in forma pauperis* affidavit and inmate trust account statement. *Id.* at 610; 28 U.S.C. § 1915(a)(2).

In this case, although Plaintiff submitted an updated *in forma pauperis* affidavit with the notice of appeal, he did not include an updated inmate trust account statement.

¹ The notice of appeal is not entirely clear, as it indicates Plaintiff is appealing an order denying "failure to state a claim," but provides a date of May 21, 2016, for the order in question. (*See* ECF No. 14.) Although no order was entered on May 21st, the order denying appointment of counsel was entered May 31st.

If Plaintiff is seeking to appeal the November 2015 order of dismissal and judgment, the appeal would be untimely. Even if the notice of appeal were to be construed as a motion to reopen the time for an appeal under Federal Rule of Appellate Procedure 4(a)(6), the motion would be denied because more than 180 days have passed since the entry of judgment.

Therefore, at the present time, he is not eligible to take advantage of the installment procedures of § 1915(b). Plaintiff is, however, liable to the Court for the full \$505 appellate filing fee, which accrued at the moment the notice of appeal was filed. Accordingly, Plaintiff is hereby ORDERED to submit either the full \$505 appellate filing fee or an updated inmate trust account statement within 30 days after the date of this order.²

If Plaintiff fails to file the required document in a timely manner, the Court will deny leave to appeal *in forma pauperis* and assess the entire \$505 filing fee from his inmate trust account without regard to the installment procedures. However, if Plaintiff timely submits the necessary document and the Court finds that he is still indigent, the Court will grant leave to appeal *in forma pauperis* and assess the filing fee in accordance with the installment procedures of 28 U.S.C. § 1915(b).

The Clerk is directed to notify the Sixth Circuit of the entry of this order.

IT IS SO ORDERED.

s/ James D. Todd
JAMES D. TODD
UNITED STATES DISTRICT JUDGE

² Plaintiff does not need to submit another *in forma pauperis* affidavit.